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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/078,283	02/14/2002	Anthony Viole	FORFLOW.008CP1	4212
20995	7590	08/27/2007	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP			BOCKELMAN, MARK	
2040 MAIN STREET				
FOURTEENTH FLOOR			ART UNIT	PAPER NUMBER
IRVINE, CA 92614			3766	
			NOTIFICATION DATE	DELIVERY MODE
			08/27/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com  
eOAPilot@kmob.com

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/078,283	VIOLE ET AL.	
	Examiner	Art Unit	
	Mark W. Bockelman	3766	

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 11 June 2007.

2a) This action is FINAL.                  2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) Claims 6, 9, 21-31, 46-49 and 50-54 is/are pending in the application.

  4a) Of the above claim(s) 50-54 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 6,9,21-31 and 46-49 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

  a) All    b) Some \* c) None of:  
    1. Certified copies of the priority documents have been received.  
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>See Continuation Sheet</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application 6) <input type="checkbox"/> Other: _____

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :5-1-2007, 2-14-2002, 2-13-2004, 9-22-2003, 6-24-2002.

## **DETAILED ACTION**

Newly submitted claims 50-54 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The method claim does not require the limitations of the apparatus, are much broader in scope, and would cause the examiner to start the examination process over.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 50-54 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 112***

Claim 49 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 49 states that there is an apex for the curved surface, however applicant's drawing shows that a ring defines the distal most end of the surface. An apex generally means a single peak.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6, 21-30 and 47 are rejected under 35 U.S.C. 102(b) as being anticipated by Pilgrim. The examiner considers the tip member of Pilgrim to show a curved surface that extends from the central axis to the outlet with an apex that is offset from the central axis. Outlets are generally rectangular as shown in 7.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 9, 21-31, 46-49 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Sandmore et al USPN 6,059,760.

Sandmore shows a catheter having a first distal end 29' and a second distal end 45' in figure 12. The examiner considers the first distal end to have a curved surface extending from the central axis to ports on the side. While the distal end seems somewhat flattened, if not continuously curved (claim 49), merely to have rounded out the distal most tip would not be considered an unobvious modification. The apex is considered to point at a 45 degree angle from the central axis on the corners of the tip. Alternatively, with respect to the second distal end, merely to have offset the apex ever slightly from the central axis would not be considered an unobvious modification.

***Response to Arguments***

Applicant's arguments filed 2-9-2007 have been fully considered but they are not persuasive. The examiner disagrees with applicant. THe redirecting surface of pilgrim starts "adjacent" to the central axis at the side opposite the lumen and extends to the outlet to form and an offset apex.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark W. Bockelman whose telephone number is (571) 272-4941. The examiner can normally be reached on Monday - Friday 10:00 to 6:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272 -4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MWB

August 20, 2007



MARK BOCKELMAN  
PRIMARY EXAMINER